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2 why we encouraged the Administrative Law Judge this morning
3 and encourage you. The 271 investigation was just initiated
4 last week. We encouraged you to get a procedural schedule
5 started. We are not trying to delay, but none of us can
6 start the review of whether or not Bell is in compliance
7 until we get the information from Bell. So to the extent
8 that their filing with the FCC is slowed down, I think they
9 have to look to themselves and realize that they have not
10 yet provided the information to us.

11 For that reason, we would request that you
12 reverse the decision in 97-20. There is no - - All you are
13 doing by allowing the interim effect is to shorten the
14 period of time you have to review before you consult with
15 the Commission, and also to uphold the ALJ in its ruling in
16 97-64.

17 CHAIRMAN GRAVES: Thank you.

18 MR. RUTAN: Your Honor, could I just add a
19 reference? I had mentioned there was an earlier reference
20 in the transcript?

21 CHAIRMAN GRAVES: Yes, sir.

22 MR. RUTAN: It is page 30 of the transcript,
23 Your Honor, where Mr. Pelto said, "You will also hear today
24 that there are substantial deficiencies with the statement,
25 vis-a-vis, Section 251. It does not comply with Section
252, it does not comply with the FCC's order, it does not

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2 comply with this Commission's arbitration order." He then
3 goes on to talk about one particular provision, Intellectual
4 Property Provision, and ends up by saying, "Your Honor, I
5 will have two witnesses today who will support the claims
6 that I have made with respect to the evidence."

7 CHAIRMAN GRAVES: Okay. Thank you.

8 Mr. Cadieux. And, Mr. Stakem, you will be
9 next.

10 MR. STAKEM: Okay. Thank you.

11 VICE CHAIRMAN ANTHONY: Ms. Thompson, under
12 the ruling that you outlined that you favored, the 90 days
13 recommended by the ALJ would start when?

14 MS. THOMPSON: As soon as the information is
15 - - We all obviously know that they intend to file. So it
16 would start as soon as we get the information or as soon as
17 they file with the Commission the information.

18 VICE CHAIRMAN ANTHONY: It could be tomorrow
19 or - -

20 MS. THOMPSON: But I also would say I agree
21 with the other parties which have stated it doesn't have to
22 be 90 days if it can be completed quicker. I would say more
23 power to us.

24 VICE CHAIRMAN ANTHONY: Thank you.

25 CHAIRMAN GRAVES: Ah, but the question is,
will it ever be concluded quicker. I suspect it is not in

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2 the best interest of parties from either perspective when
3 there is time lines to give up any days that have been
4 granted to either side in the time lines that are there.

5 MS. THOMPSON: Well, but what I'm suggesting
6 is the procedural schedule itself - -

7 CHAIRMAN GRAVES: Well, I understand.

8 MS. THOMPSON: - - can have a hearing date
9 that's less than 90 days from now.

10 CHAIRMAN GRAVES: Well, I understand that.
11 But I suspect that there are going to be others that will
12 come in and say this is too critical, these are important,
13 these matters are of such importance we have got to be
14 absolutely certain that we, again, meet our needs. And I
15 understand it. And that's fine. I'm just saying that it is
16 unlikely that anybody is going to voluntarily give up any
17 abilities that they have under the various provisional
18 provisions of the Act.

19 MS. THOMPSON: We are still in the process of
20 discussing it among the parties, as we were ordered to by
21 the Administrative Law Judge. But a proposed procedural
22 schedule has already been distributed that would have a
23 hearing on Day 73. And then that gives you from that time.
24 Then it is up to you to get it out.

25 CHAIRMAN GRAVES: I understand. I
understand.

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2 MS. THOMPSON: And so it could possibly go by
3 Day 74. And, like I say, this is just a proposal. But
4 that's assuming as soon as Bell files then we get the ball
5 rolling.

6 CHAIRMAN GRAVES: I will believe it when I
7 see it.

8 Mr. Cadieux, you may proceed.

9 MR. CADIEUX: May it please the Commission,
10 very briefly.

11 COMMISSIONER APPLE: Excuse me. I just want
12 to comment, that would be pleasing.

13 MR. CADIEUX: I'm going to try to hold it
14 down. The first point, Southwestern Bell already has an
15 expedited procedure. The 60 day, what I'll call,
16 provisional effectiveness pending a hearing on the merits of
17 the SGTC, that's in effect an interim or provisional
18 expedited procedure in itself. So what you are being asked
19 to do in the interim relief is basically expedite an
20 expedited procedure. And, as Commissioner Graves indicated,
21 the parties are going to be reluctant to give up time that
22 they're entitled to.

23 In effect the interim relief request is
24 asking you to give up time that you are entitled to, 30 days
25 of precious time. If you go from this day forward and you
just take the face value that Southwestern Bell has said

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2 publicly that if you approve the interim relief requested,
3 they will be at the FCC almost immediately. The difference
4 of approving or allowing the interim relief requested to go
5 into effect or not is 50 days versus 20 days. And I would
6 tie that into I think the Commission should - - needs to
7 consider what the scope of its consultative role is,
8 because I'm afraid it may be implicit from how Southwestern
9 Bell may have characterized its view of the consultative
10 role or what it would file in 97-64. It may oversimplify.

11 In our view, and I think that's going to be
12 the view of the other parties, it is not just a matter of
13 the Commission receiving interconnection agreements that it
14 has already approved or the SGTC. If the Commission's
15 consultative role covers the whole laundry list of is Track
16 B satisfied, is Track A satisfied, is the competitive check
17 list satisfied, and I would also - - I think it is in
18 271(D)(3) the Commission should keep in mind that there is a
19 separate public interest standard for the Commission to
20 consider in determining whether to allow - - to - - well,
21 whether the FCC should allow interLATA entry. And logically
22 and obviously the Commission should also - - the scope of
23 your consultation with the FCC should be that same coverage.
24 So I think you need to take the public interest question or
25 scope into this. Which leads into my conclusion that the
Commission's investigation here positions themselves to do a

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2 consultative review. And to some extent I think is going to
3 be fact intensive.

4 The questions have started to come up, and I
5 don't particularly want to get into them today, and I don't
6 think you do, about, well, what is the nature of Brook's
7 network, what are they doing, where are they. Some parties
8 are going to argue that that is definitely very relevant in
9 terms of whether Track A, for example, is met. And that is
10 going to be a factual investigation.

11 Now Brooks realizes particularly in a state
12 like Oklahoma where it is the first company to have a signed
13 interconnection agreement, an approved interconnection
14 agreement, and it is the first company that's starting to
15 pass live traffic, we are going to be a major subject of
16 that factual inquiry, and we are fully prepared to be as
17 helpful as we can to the Commission. But we have an
18 interest in ensuring or hoping that the process that the
19 Commission - - the procedure that the Commission has to do
20 that investigation has at least a reasonable amount of time
21 under the circumstance. So question. Should you make it 20
22 days or should you make it 50 days.

23 And, frankly, the last point I will make is,
24 I want you to picture the scenario of what is going to
25 happen if you grant interim relief. You will have a 271
filing within probably a day or two. It won't be restricted

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2 to Track B. It will cover the gamut. It will be Track A.
3 It will say we meet the standards of Track A, we meet the
4 standards of Track B, we meet the check list. Your clock,
5 your 20 day clock, begins to run immediately.

6 At the same time there is going to be
7 objections and motions in front of the FCC saying, wait a
8 minute, Track B isn't even available to Southwestern Bell in
9 Oklahoma. That's certainly going to be Brook's position,
10 because if you read Section B of 271 it is pretty clear to
11 me that Track B is only available and a SGTC can only have
12 271 implications if nobody - - no carrier has filed a
13 request for interconnection. That clearly is not the case
14 here. So you are going to have - - While your 20 day clock
15 is already running, you're not going to know whether it is a
16 live clock or not. 10 days through it the FCC may say, you
17 know, we are going to throw this out because Track B is not
18 available. But it is going to put you in the dilemma do I
19 immediately rush and do whatever I can within 20 days to
20 discharge my role, or do I do nothing, or do I start under a
21 process or under an assumption I'm really going to have 50
22 days, a real mess.

23 So again - - One last point. This is a
24 little - - a variation off of what Mr. Rutan was saying.
25 Irrespective of whether you agree with the position that as
soon as the SGTC went out the door it was offered and,

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2 therefore, available, even if you don't accept that for
3 purposes of argument, the fact is that there is nothing in
4 the Federal Act that would have prevented Southwestern Bell
5 from taking that exact same document in the binder that has
6 been filed in the form of the SGTC and for any CLEC that
7 either is currently in the door negotiating with them or
8 might come in the door tomorrow to say, look, we can
9 negotiate a bilateral deal, you know, we have got some
10 flexibility to see what your needs are, but, if you want,
11 you might want to take a look at - - this is kind of a
12 standing offer that we would be willing to enter into in a
13 bilateral agreement. And if a CLEC wanted to do it, it
14 could say great, sign it, file it with the state commission,
15 a 90 days time requirement, and the standard of review is
16 the limited standard under Section 252(E).

17 The point is, to the extent there is an
18 argument that the SGTC has an independent value apart from
19 271 triggering, that is a red herring, because the same
20 thing could have been done without using the SGTC form. The
21 reason the SGTC form was used was 271 triggering, pure and
22 simple. That is all I have.

23 CHAIRMAN GRAVES: Thank you.

24 COMMISSIONER APPLE: Let me ask a little
25 information relative to your statement that you are
competitively in the market now. Where do you actually

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2 stand? Where are we?

3 MR. CADIEUX: Well, I'm trying to - -

4 Actually I'm trying to get current information from Tulsa.

5 I did - - I am - - Brooks is already starting to get

6 requests for information from the Department of Justice,

7 from other interested parties, some of whom are in the room

8 today, for the very reasons we are talking about here. And

9 I'm beginning the process of trying to put relevant

10 information together.

11 But I'll tell you right now I can tell you

12 for Oklahoma City, we actually completed interconnection and

13 started to pass live traffic in mid-January with

14 Southwestern Bell. To date we have five switched service

15 business customers, on-net customers, customers who are

16 directly connected to our fiber. We have one test

17 residential customer on a resell basis. And I can - - There

18 is a lot - - This will be a lot of the factual background.

19 I mean, one of the things that's going on

20 here, you know, Brooks has made no bones about it that its

21 preferred mode of operation is using unbundled loops from

22 Southwestern Bell. In order to do that, we have to go out

23 and build physical collocations. And that process has

24 taken a lot longer than we had anticipated. And we are not

25 there yet. So, yes, we have started to pass live traffic by

five on-net customers and have one test resale customer.

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2 COMMISSIONER APPLE: Are dial tones being
3 used?

4 MR. CADIEUX: In Oklahoma, yes. I believe
5 the situation is pretty similar in Tulsa. And I will have
6 information on that shortly.

7 COMMISSIONER APPLE: It is a fact?

8 MR. CADIEUX: It is a fact.

9 COMMISSIONER APPLE: In that regard, there is
10 competition in Oklahoma with a dial tone, is that correct?

11 MR. CADIEUX: There is for those customers.
12 Now what the implications are for this for Section 271 is a
13 whole separate issue.

14 COMMISSIONER APPLE: But it is a start.

15 MR. CADIEUX: It is a start and we're glad to
16 be a part of it.

17 CHAIRMAN GRAVES: Thank you, Mr. Cadieux.
18 Mr. Stakem.

19 MR. STAKEM: Mr. Chairman, members of the
20 Commission, I thank you for waiting so patiently to hear my
21 remarks.

22 COMMISSIONER APPLE: May our patience be
23 rewarded.

24 CHAIRMAN GRAVES: We hope they're worth it.

25 MR. STAKEM: And I'm happy to report that is
- - You know, it's a blessing and a curse to be the end.

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2 You get very disorganized when you go last, I have
3 discovered, but you have less to say.

4 So, let me share with you a couple of views
5 and then make a couple of comments about the motion that's
6 sort of lost in all of this, the Motion to Dismiss.

7 COMMISSIONER APPLE: Oh, that.

8 MR. STAKEM: But I would like to address the
9 interim relief first and then a few words about the Motion
10 to Dismiss.

11 And the first comment I have to make has to
12 do with the Commission - - the ALJ Goldfield's approach and
13 the notion that while a statement of generally available
14 terms and conditions may have an independent purpose under
15 Section 252, when one is filed, and in particular when one
16 is - - one asks as they did for interim relief, the
17 Administrative Law Judge and this Commission can nonetheless
18 treat it separately, distinctly, and manage it as if it has
19 no impact on Section 271. I think it is just wrong as a
20 matter of fact to have taken that approach on the motion for
21 interim relief, and it is wrong as a matter of law.

22 Try as he might or try as you might to try to
23 keep 252 filing and the SGTC effect limited to the local
24 exchange market and how it might impact expected new
25 entrants and other participants in the local exchange market
as a 252 stand-alone document, try as you might to keep the

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2 focus on the local exchange market, that's not what you were
3 asked to do on interim relief, and it is not possible as a
4 matter of law.

5 I'm glad that Mr. Toppins brought with him as
6 a demonstration his wonderful charts about interLATA long
7 distance interexchange competition, because, among other
8 things, and we agree with it, we have known for a long time
9 that 85 percent of the market would like to have
10 competition. But what it focuses on that is important for
11 this is the interim relief request isn't about the local
12 exchange market, what's available there and what will this
13 document, wherever it is now, will this document help people
14 get into the local exchange market. That is not at all what
15 the request for interim relief is all about. And this is
16 just perfect proof of it. It is about using it for the
17 trigger that it is if you grant the interim relief for 271
18 to get into the interexchange market. Don't be confused
19 about it. They were up front about it in their motion. We
20 are entitled to take them at their word. The benefit they
21 see in interim relief is that it might make it faster for
22 them to get into the interexchange market than it otherwise
23 would be. And the other side of it to the extent that they
24 bow in the direction of the local exchange market, they say,
25 well, nobody is going to be harmed in the local exchange
market. Well, it is artificial to think that you can

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2 separate the two. As a matter of law you can't do it. And
3 the reason you can't is in 271(C)(1)(b) the law equates
4 permission to go into effect with approval for the purpose
5 of triggering the right to file an application.

6 Commissioner Graves asked earlier, where is
7 the reference in 271 that its permission to go into effect.
8 And it is 271(C)(1)(b). And it says in part, quote, "A
9 statement of the terms and conditions that the company
10 generally offers to provide such access and interconnection
11 has been approved or permitted to take effect by the state
12 commission."

13 So the law equates the two, permission to
14 take effect with approval, and it is the triggering. That's
15 the only reason why this is a possibility, that it remains a
16 possibility for Southwestern Bell to say there will be
17 benefits to competition some day in the interLATA market,
18 let's make it go faster. But this case is not about delay.
19 This case is about haste.

20 CHAIRMAN GRAVES: But approval or permission
21 to take effect does not in and of itself mean that
22 competition exists and that other requirements of 271 have
23 been met.

24 MR. STAKEM: Certainly it does not.

25 CHAIRMAN GRAVES: Okay.

MR. STAKEM: So make no mistake about it. It

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2 is appropriate to consider a 271 because you were asked to
3 by the company and because you can't avoid it in any event
4 because of the way the law is drafted. Now - - And you then
5 really have to stop and think looking at Section 252 and
6 this notion, what does it mean to have the Federal
7 government giving us another choice for decision making. We
8 are use to thinking about approving orders or requests. We
9 are use to thinking about denying them or disapproving them.
10 Now we get a third choice in this statute sort of strangely.
11 The choice is permit it to go into effect. It is a strange
12 animal.

13 It has been exclaimed that a generally
14 available term and condition, you know, it has to be really
15 available as in offered to the public or it can't by
16 definition satisfy as a generally available term. It is
17 sort of like buying clothes off the rack. I mean, it either
18 is hanging there and you can go and take it down and take it
19 to the check out, or it is not. And for you to say that the
20 store is open, the garment is on the rack means to say that
21 they really are offered for sale. They can't have it the
22 way they like, which was it is only offered, it's only
23 available to you, we're only going to let you out of the
24 store if the Commission also tells us that we can use this
25 as a trigger to go to the FCC.

So, here is in part where my Motion to

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Dismiss overlaps those arguments that I would make about the denial of interim relief. My point in part, if you looked at Section 252 and this notion that there is this third choice, perhaps permission, it is false to suggest that it is really a choice. The way we believe the statute should be interpreted, 252(F), is that this permission to go into effect happens by default. You are required to hold a substantive review and to either approve or to disapprove, and our view is that you have to do that approval or disapproval within 60 days or by default this third category of sequence happens, this permission to go into effect.

In the context of this, and it is not the best drafted statute in the world, and certainly that's true, in the context of a requirement though, think about it, the Federal government has said the Commission may not approve an SGTC if it does not comply with 251. Okay? There is an absolute prohibition. It says that you must conduct a substantive review. And it protects against delay by allowing the effect of triggering the ability to request interim relief at the end of 60 days. There is no reason looking at the Act as a whole to believe that the Federal government expected the Commission to at any time short of 60 days to enter an order permitting something to go into effect. Just the reverse is true for the reasons that we oppose the interim relief. The job is substantial. The job

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2 is important. The job needs to be done right. And you
3 shouldn't short change yourself in the time that you have to
4 do that.

5 So we have argued the proper interpretation
6 of 252 is that you really don't have the power to do it.
7 That's not a proper reading of the statute. Even if you do,
8 you shouldn't exercise your discretion to do that because
9 you have handcuffed yourself and shortened the time.

10 Mr. Toppins talked about entitlement and what
11 his company was entitled to. You know, if we really want to
12 get down to talk about hypertechnicalities, if we really
13 want to part the statute or we really want to play the game
14 of let's make sure everybody is entitled to exactly what
15 they are entitled to and they take advantage of it, it is
16 that you are entitled to 60 days and you ought to take the
17 60 days. And they haven't, as the Attorney General
18 suggested to you, presented any good reason why you should
19 not.

20 And, by the way, if you look at the Michigan
21 order that they attached, I think it is Michigan, it may be
22 another jurisdiction, attached to support their interim
23 relief motion where it was permitted to go into effect, it
24 happened only on the 60th day. It happened by default. I'm
25 not aware of any place in the country, and I stand to be
corrected, but I'm not aware of any place in the country

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2 where the Commission is concerned that it doesn't know on
3 the merits what it wants to do, nonetheless allows it,
4 permits it to go into effect quicker than 60 days. Maybe
5 there is such a place.

6 Let me turn to the Dismissal Motion and this
7 notion that you should never approve or allow it to go into
8 effect on an interim basis. If you have some real concern
9 about the merits, it is not likely that you will ultimately
10 succeed on those merits. That's precisely the situation
11 here. There are some big points. It is not supported by
12 costs studies required by Section 251. You know that from
13 the arbitrations. Those cost studies haven't been finished,
14 they're not going to be finished - - or I don't know when
15 they're going to be finished and presented, but there is
16 going to be an evidentiary hearing on them. What I do know
17 is that the rates - - or believe to be the case, the rates
18 in this document are not supported by those cost studies.
19 The statute says it has to be supported by those cost
20 studies and the statutes prohibits you from approving the
21 document if it doesn't comply with those statutes. It is
22 beyond me how anybody could suggest in this forum under
23 those circumstances this document for that reason alone
24 could ever be approved. And if that's the state of events,
25 there is not much reason to do anything about it now.

There are other reasons. They're all

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2 detailed in our motion. There were four or five specific
3 reasons, shortcomings in the document, ways in which it
4 violates the statute. And I won't belabor those points, but
5 to the extent that there is serious question about the
6 merits, you should be all the more inclined to disapprove
7 interim request for relief.

8 CHAIRMAN GRAVES: Can we disapprove it after
9 the 60th day?

10 MR. STAKEM: Well, I think you have it - -
11 Well, can you disapprove the statement?

12 CHAIRMAN GRAVES: Statement.

13 MR. STAKEM: After the - - Certainly.

14 CHAIRMAN GRAVES: Okay. Well, then I - -

15 MR. STAKEM: You can't do the other.

16 CHAIRMAN GRAVES: You can't approve it after
17 60 days.

18 MR. STAKEM: Well, you can't approve it
19 unless - - Yes, you can approve it after the 60th day. You
20 can't approve it without a determination that it complies
21 with Section 251.

22 CHAIRMAN GRAVES: I understand that. Okay.
23 All right.

24 MR. STAKEM: I misunderstood your question.

25 CHAIRMAN GRAVES: And I was concerned earlier
I thought I heard you say that after 60 days it is permitted

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2 to go into effect.

3 MR. STAKEM: Well, that is sort of - -

4 CHAIRMAN GRAVES: And it is sort of preempted
5 at that point from action.

6 MR. STAKEM: No. No. By default on the 60th
7 day it is given the trigger effect.

8 CHAIRMAN GRAVES: Okay.

9 MR. STAKEM: If the company on the 60th day -

10 -
11 CHAIRMAN GRAVES: Wants to file?

12 MR. STAKEM: Wants to file - -

13 CHAIRMAN GRAVES: They can?

14 MR. STAKEM: Yes.

15 CHAIRMAN GRAVES: Regardless of whether we
16 have taken action or not?

17 MR. STAKEM: Yes.

18 CHAIRMAN GRAVES: Okay. All right. I
19 understand your point then. Go ahead.

20 MR. STAKEM: And if you would give me just
21 one moment to look over my notes, I don't think I have
22 anything else to add to those remarks. Thank you for your
23 attention. If there are any questions.

24 VICE CHAIRMAN ANTHONY: State the full title
25 to your Motion to Dismiss.

MR. STAKEM: All right. From memory?

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2 Okay.

3 This is a whopper. "MCI Telecommunications
4 Corporation's Motion to Intervene, Objections and Motion to
5 Dismiss the Application of Southwestern Bell Telephone
6 Company for Approval of a Statement of Generally Available
7 Terms and Conditions Under the Telecommunications Act of
8 1996, and the Motion of Southwestern Bell Telephone Company
9 for Interim Order Permitting its Statement of Generally
10 Available Terms and Conditions to go into its Effect."

11 VICE CHAIRMAN ANTHONY: So it applied to the
12 interim relief and the merits.

13 MR. STAKEM: Yes. It did.

14 VICE CHAIRMAN ANTHONY: Thank you.

15 MR. STAKEM: And there was a supplement that
16 has a similar title.

17 COMMISSIONER APPLE: A sequel?

18 MR. STAKEM: The sequel. The sequel comes
19 when we have an evidentiary hearing.

20 CHAIRMAN GRAVES: Thank you, Mr. Stakem.

21 Mr. Gray.

22 MR. GRAY: Your Honor, I will endeavor to
23 make this as quick as possible.

24 First of all, Your Honor, you might ask how
25 my arguments will be. Let me say first I will start off by
addressing the comments made by the parties and then I will

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2 proceed to my arguments.

3 First of all, Your Honors, start off with the
4 comments made by Southwestern Bell. Mr. Toppins makes a
5 statement that the ruling of the ALJ is inconsistent and
6 that the ALJ said let it go into effect but then he said - -
7 then when the ALJ said 90 day notice, that's inconsistent.
8 However, Your Honors, I don't believe the ALJ was
9 inconsistent. I think it is important that the Commission
10 remembers that we are talking about two different sections.
11 We have got a Section 252 and a 271. And where the ALJ's
12 arguments were based on 252, he said that, okay, it can go
13 into effect under 252. So I don't believe the ALJ was being
14 inconsistent because he was not even addressing 271 at the
15 time. Now when the time comes for us to address 271, that's
16 when he said 90 days notice. So I don't believe the ALJ was
17 inconsistent.

18 Mr. Toppins also makes the argument there is
19 no requirement under the Federal law for the 90 days. I
20 would agree that there is no law, that there is no
21 requirement for it, but there is no prohibition on it
22 either.

23 He said that it violates Federal law.
24 However, he failed to provide any support as to how it
25 violates Federal law. I believe where the Congress felt it
was necessary to put restrictions in and so forth, they did

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2 so. If you review the documentation or if you review the
3 Act and everything, you will see where they determined that
4 time frames or restrictions were necessary, they did that.

5 Mr. Toppins chose to characterize it as being
6 illegal. Like I say, I don't believe that's supported. I
7 don't think you will find anywhere where it says that it is
8 illegal. I think the key factor here is the timing of it.
9 Probably if we had been back in July or we had made this
10 request in July, I don't think Southwestern Bell would have
11 had any problems with it. I don't think they would have
12 said it was illegal at that time. But I think due to their
13 timing and where we are today, I think they have a problem
14 with it. It might be legitimate, but I guess my argument is
15 I don't believe it is illegal.

16 The ALJ made the mention - - The AG mentioned
17 regarding the motion. And this may be a petty argument to
18 the Commission, however, I will be back here next year
19 having to address the issue. This was not a motion hearing.
20 It started off on the motion docket. Then the
21 Administrative Law Judge continued it to a hearing on the
22 merits on the 29th. And why is that important? Because
23 this Commission has taken the position that you cannot
24 present a witness on a motion docket. So I want to make
25 sure that we maintain that procedure.

Now we drop down to arguments raised by

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2 AT&T. I agree with the first comment made by AT&T Counsel
3 that the ALJ's decision was not inconsistent. The Counsel
4 for AT&T said that their witnesses were denied the
5 opportunity to testify. I would agree with him, but only if
6 those irrelevant witnesses were denied. I don't believe if
7 they had something relevant they would have been denied. I
8 don't believe this Commission has ever denied a issue - - I
9 mean, has never denied a witness that had relevant
10 information. I think the ALJ determined that the witnesses
11 and the things that they were wanting to talk about were not
12 relevant at that time in the proceeding.

13 Now when the time comes for a full hearing on
14 the merits, those witnesses are welcome back and I believe
15 the ALJ would have no problem with hearing their testimony.

16 VICE CHAIRMAN ANTHONY: Well, wait a minute.
17 If AT&T felt that the document had some legal deficiencies
18 and before the ALJ was an opportunity to give interim
19 approval to it, don't you think that is relevant?

20 MR. GRAY: No, Your Honor. The crux of what
21 we were looking at that day was talking interim relief,
22 whether or not it should be allowed to go into effect, not
23 the approval, because when you start talking about the
24 deficiency you're getting to the approval side of it. That
25 was not the issue that was before the ALJ at that time.

And then, like I say, the other witness, the

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2 one to talk about the status of the AT&T negotiations, it
3 was not relevant at that proceeding.

4 And, Your Honor, I would just draw your
5 attention to page 93 of the transcript which your office has
6 been provided. And that might provide guidance. Now I
7 didn't read the full text, so I would encourage you to read
8 it and, you know, form your own opinion from there.

9 Counsel for AT&T said the only reason to let
10 it go into effect on an interim basis is to allow
11 Southwestern Bell to go to the FCC. Your Honors, as we have
12 said, we got a 252 and 271. He refuses to acknowledge the
13 fact that 252 even exists. The ALJ based his decision on
14 252. So I disagree with his statement. There are other
15 reasons. 252, namely.

16 Counsel also made statements regarding the
17 appendixes. I would encourage you to look at page 31 of the
18 transcript wherein it was my argument - - we talked about -
19 - Southwestern Bell had come to the Commission Staff ahead
20 of time and had gone through the appendixes with Staff.
21 AT&T took it upon themselves this week to come in and talk
22 to Staff about the appendixes also. So we have had an
23 opportunity to go through the appendixes.

24 Sprint makes the argument that they're here
25 to make sure the requirements are met. Your Honors, I have
been doing this for eight years and never has an IXC come to

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2 the Commission and said we're here to help you out. Never
3 has an IXC come to this Commission and said Southwestern
4 Bell was not following state or federal law. I find it
5 pretty ironic that they choose to come in at this point.

6 Dropping down to MCI's arguments or the
7 Motion to Dismiss. The ALJ found that under 252 there was
8 basis for the application to keep going. Now from listening
9 to the ALJ, it is my belief that if it had only been a 271
10 filing, the ALJ probably would have concurred with MCI at
11 that point and dismissed the case. However, 271 was not the
12 point that the ALJ made his decision on.

13 And you can tell that the crux of Mr.
14 Stakem's argument dealt with 271. I believe to him 252
15 probably is a naughty word at this point, but he never
16 mentioned the 252 throughout his pleading or through his
17 arguments. His statement was you are entitled to the full
18 60 days and you should take it. Well, Your Honor, if we
19 don't believe that we need 60 days, we shouldn't have to
20 take it. And I don't believe that is Mr. Stakem's or any
21 other company's position to tell us what time frame that we
22 should conduct our work under.

23 And he made reference to there being some
24 deficiency in the filing. Once we have had an opportunity
25 to fully look at it and once we get to the merit hearing, we
will address any deficiency.